

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR -2 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0356-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JOSE JESUS ALCALA,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054810

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Emily Danies  
By Emily Danies

Tucson  
Attorney for Petitioner

\_\_\_\_\_

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, petitioner Jose Alcala was convicted of numerous counts arising from an automobile accident including two counts each of assault and aggravated assault of a minor under fifteen; criminal damage; leaving the scene of an accident involving death or serious physical injury; and two counts each of aggravated driving under the influence of an intoxicant with a revoked, suspended, or restricted license and aggravated driving with an alcohol concentration of .08 or more with a revoked, suspended, or restricted license. The trial court sentenced him to a partially aggravated, 12.5-year prison term for aggravated assault of a minor under fifteen and to concurrent, lesser terms on all of the other counts with the exception of leaving the scene of an accident, for which the court imposed a consecutive, presumptive term of 3.5 years.

¶2 On appeal, we affirmed Alcala's convictions, vacated his sentences on the two counts of misdemeanor assault, remanded for new sentencing on those counts, and affirmed the sentences on the remaining counts. *See State v. Alcala*, No. 2 CA-CR 2007-0161 (memorandum decision filed May 8, 2008). Alcala then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. He now seeks review of the trial court's denial of that petition. Absent a clear abuse of discretion, we will not disturb the court's ruling on post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 On review, Alcala argues, as he did below, that trial counsel's "use of cocaine during part of the pendency of his case as well as his dealings with the [State] Bar [of Arizona] pursuant to his suspension . . . rendered his representation ineffective," as evidenced by his failure to utilize an accident reconstruction expert at trial who would

have supported an “alternative theory of the accident.” To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below prevailing professional norms and that the outcome of the case would have been different but for the deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). To demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

¶4 Based on the record before us, we cannot say the trial court abused its discretion in denying Alcalá’s petition. The court denied relief in a thorough, well-reasoned minute entry order that identified Alcalá’s arguments and correctly ruled on them in a manner permitting this court to review and determine the propriety of that order. The court correctly concluded that Alcalá had not demonstrated how counsel’s arguably deficient performance prejudiced the outcome at trial. We therefore approve and adopt the court’s ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We further note that, to the extent Alcalá argues counsel’s alleged drug use while he represented Alcalá constitutes per se ineffective assistance of counsel, we reject that claim. *See State v. D’Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988) (“[I]ntoxication or alcoholism of counsel, standing alone, does not establish a per se violation of a criminal defendant’s right to receive effective assistance of counsel.”).

¶5 Because Alcala has not sustained his burden on review of establishing the trial court abused its discretion in denying his petition for post-conviction relief, we grant the petition for review, but deny relief.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge